IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2595 OF 2007

Rajesh Ramchandra Chaudhari ...Appellant

vs.

The Municipal Corporation of
Greater Mumbai ...Respondent

Mr.B.Unnikrishnan for the Appellant
Mr.J.J.Xavier for respondent-B.M.C.

CORAM: A.S.OKA,J.
DATE : NOVEMBER 21,2007.

ORAL JUDGMENT:

1. Admit. The Advocate for the Respondent waives service. By consent taken up for hearing forthwith.

2. The Appellant is the original unsuccessful plaintiff. By filing a suit, the plaintiff challenged the notice issued under section 351 of the Mumbai Municipal Corporation Act,1888 and the order passed thereon. The trial court dismissed the suit by impugned Judgment and Decree. The submission of the learned Advocate for the Appellant is that evidence led by the Appellant had gone unchallenged and the documentary evidence produced on record shows that the structure was in existence prior to 1962. He submitted that as there was no challenge to the evidence adduced by the Appellant, the trial court ought to have passed a decree. The learned Advocate for the Respondent-Corporation submitted that for various reasons the Respondent could not file the written statement. He submitted

that instead of deciding the Appeal in favour of the Appellant, by taking a liberal view, the suit be remanded to the trial court with a liberty to file written statement.

3. The prayer made by the Advocate for the Respondent deserves to be accepted. There will be no prejudice to the Appellant as the decree passed against the Appellant will have to be set aside and till the disposal of the suit, the structure of the Appellant will have to be protected.

4. Hence, I pass the following order :

i) The impugned Judgment and decree dated 7th April 2006 is quashed and set aside. L.C.Suit No.4749 of 2002 is restored to file.

ii) It will be open for the Respondent to file written statement on or before 31st January 2008.

iii) The trial court will decide the suit afresh by permitting the Appellant to lead further evidence, if he so desires. The witnesses already examined by the Appellant will be permitted to be cross examined by the Respondent.

iv) Hearing of the suit is expedited.

v) All contentions of the parties are expressly kept open.

vi) Till the disposal of the suit, the respondent-corporation will not take any action of demolition against the structure in dispute subject to condition that the Appellant will not carry out any additions or alterations to the said structure without permission of the trial court.

vii) The Appeal is partly allowed in above terms with no order as to costs.

viii) Writ to be sent immediately.

JUDGE